

REMARKS

This Response is submitted in reply to the non-final Office action mailed on July 16, 2008. The Commissioner is hereby authorized to charge any fees which may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-441 on the account statement.

Claims 1, 3-8, 10 and 11 are pending in the application. Claims 2 and 9 were previously cancelled. In the Office Action, Claims 1, 3-8, 10 and 11 are rejected under 35 U.S.C. § 103(a). For at least the reasons provided below, Applicants submit that the obviousness rejection should be withdrawn.

In the Office Action, Claims 1, 3-8, 10 and 11 are rejected under 35 U.S.C. § 103(a) as being unpatentable over either one of U.S. Patent No. 4,904,236 to Holmes, et al. ("*Holmes*"), GB Patent No. 472,428 to Hirschson ("*Hirschson*"), or U.S. Patent No. 1,232,576 to Leich, et al. ("*Leich*"). Independent Claims 1 and 11 recite, in part, an apparatus for preparing and distributing alimentary products formed of a portion of ice-cream or mousse contained between two bakery products, the apparatus comprising a means or member for compressing the product and for ejecting the final product. Applicants respectfully submit that each of the cited references fail to disclose or suggest every element of the present claims.

Holmes fails to disclose or suggest a means or member for compressing a product as required, in part, by independent Claims 1 and 11. Instead, *Holmes* only teaches displacing a first, or lower, wafer onto a receptacle, positioning an ice-cream block on the first wafer, and dispensing a second, or top, wafer onto the ice-cream block to provide a finished ice-cream sandwich. Specifically, *Holmes* states, "lower plates 34 are displaced their maximum distance which is designed to be sufficient to allow the lowest wafer 18 to fall into the receptacle 30 which is located, at that stage immediately below the dispensing means 20." Subsequently, "the ice-cream block is positioned on the first dispensed wafer in the dispenser 30 and the operation then is repeated for the top wafer of the sandwich. The dispenser 30 containing the resulting sandwich is removed from the holding tray 22 for handing to the customer." See, *Holmes*, column 3, lines 36-43 and 63-68. As summarized above, *Holmes* clearly omits any means or member for compressing the resulting sandwich during removable and before handing the product to the customer.

Hirschson, like *Holmes*, also fails to disclose or suggest a means or member for compressing a product as required, in part, by independent Claims 1 and 11. Instead, *Hirschson* teaches pushing a lower wafer under an ice cream mold and then ejecting a finished product by pushing both a lower and upper wafer and an ice-cream block located therebetween. Specifically, *Hirschson* states that a “cam disc 52 first moves the pusher 22 by means of the curved groove 53, so that the pusher pushes the lowermost wafer 23 (Figure 4) of the magazine 20a under the mould. The curved groove 54 then moves the ejector 24 to the right (Figures 3 and 5), so that the block of ice-cream is pushed out with a wafer at the top and the bottom of it.” See, *Hirschson*, page 3, column 1, lines 10-26. Therefore, once pushing the lower wafer under the ice cream mold, the apparatus pushes laterally the finished product away from the apparatus without any compression of the finished product.

Leich similarly fails to disclose or suggest a means or member for compressing a product as required, in part, by independent Claims 1 and 11. Instead, *Leich* teaches releasing a first biscuit onto a table, cutting off a slice of ice-cream from an ice-cream brick onto the first biscuit, and releasing a second biscuit onto the ice-cream slice. Specifically, *Leich* states that “at each limit of movement of the knife lever 10, a biscuit is released, and in the formation of a sandwich, upward movement of the lever would release a biscuit which would drop upon the table 7, downward movement of the lever would slice the ice-cream, and in the latter portion of the downward movement of the lever, the second biscuit would be released to complete the sandwich.” See, *Leich*, page 2, column 1, lines 15-24.

Moreover, since *Leich* only teaches releasing both wafers and the middle ice cream slice onto an open table, *Leich* also fails to disclose or suggest means or member for ejecting the final product as required, in part, by independent Claim 1 and 11.

The Office Action states, however, it would have been an obvious matter of design choice to have the control means act on a pivot whereon there is keyed a circular sector provided with two pivots that rotate a toothed sector and a compensator by rotating around the pivot of the circular sector, since Applicants have not disclosed that such a design choice solves any stated problem and it appears that the invention would perform equally well. Moreover, the Office Action states that it would have been obvious to have designed the cited references with “two”

dispensers as opposed to one, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Regardless of these assertions, each of the cited references still fails to disclose or suggest a means or member for compressing a product. In fact, the addition of a means or member for compressing the product would require major modification to the apparatuses taught in the cited references.

For example, *Holmes* dispenses its second wafer from directly above the ice cream block at a close distance. See, *Holmes*, Figures 4 and 7. Any addition of a compression member, such as a plunger or piston, between the wafer stack holding chute 14 and the ice cream block would directly interfere with the device's ability to dispense the wafers downward, which is an essential element of the *Holmes* device and is essential to producing the ice cream sandwich taught in *Holmes*. Even if the wafer stack holding chute 14 were modified to act as a compressing member, the unused wafers would have to contact and compress the product. Besides the insufficient compression that the non-rigid wafers could provide, the resulting compression would most likely damage the structure of the unused wafers.

Hirschson, rather than teaching the dispensing of wafers onto an ice cream block, teaches pushing wafers into direct contact with the ice cream block such that the only way to dispense the finished product is to push laterally the finished product away from the wafer magazines 20. See, *Hirschson*, Figures 4 and 5. As a result, the *Hirschson* apparatus does not even provide sufficient space around the ice cream sandwich to provide a compressing member. Moreover, like *Holmes*, any compression by the magazine 20 would most likely damage the structure of the wafers in the magazine, as they would have to serve as the compression member.

Finally, *Leich* teaches forming the finished product on a table separate from the device. Therefore, the addition of a compression means or member would require an entirely new structure or would require major modification of the biscuit supply chamber 12 to allow translational movement of the chamber, which is not possible given that the chamber 12 is secured to the body casing 5. See, *Leich*, Figure 1 and page 1, column 2, lines 68-72.

For at least the reasons described above, each of the cited references fails to disclose or suggest every element of the present claims. Moreover, it is clear that any modification of the cited references would change the principle of operation of the devices taught in those

references. As a result, the teachings of the references are not sufficient to render the claims *prima facie* obvious. See, MPEP 2143.01.

Accordingly, Applicants respectfully request that the obviousness rejection of Claims 1, 3-8, 10 and 11 be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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